United States Court of Appeals for the Second Circuit



APPELLANT'S BRIEF

76-6037

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OSCAR LONDONO

Plaintiff-Appellant,

-against-

Docket No. 76-6037

MAURICE F. KILEY, New York District Director, U.S. Immigration & Naturalization Service,

Defendant-Appellee.



PLAINTIFF-APPELLANT'S BRIEF

BARRY J. OPPENHEIM Attorney for Plaintiff-Appellant

LINDA ATLAS
Of Counsel

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

OSCAR LONDONO

Plaintiff,

76-6037

MAURICE F. KILEY, New York District Director of the U.S. Immigration & Naturalization Service.

Defendant.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

This appeal does not question the government's right to deport aliens, but raises the issue of the manner in which the government acted to deport the plaintiff appellant.

The U.S. District Court Judge erred in his denial of the preliminary injunction and vacation of stay of deportation of the plaintiff-appellant for the following reasons:

- (a) Plaintiff-appellant was in possession of a letter granting him an extension of time to depart the United States until November 19, 1976. The consequences of this date were not considered by the U.S. District Court Judge.
- (b) The District Director of the Immigration & Naturalization Service acted in an arbitrary and capricious manner on January 28, 1976 in effectively revoking plaintiff-appellant's grant of

(b) (cont'd) voluntary departure retroactively. (c) Plaintiff-appellant would have been denied his right to an administrative adjudication on his motion to reopen his deportation proceeding for the purpose of restoring voluntary departure due to the denial of stay of deportation. STATEMENT OF THE CASE This is an action for a declaratory judgement brought by plaintiff-appellant OSCAR LONDONO to enjoin his deportation on the ground that the District Director of the Immigration & Naturalization Service acted arbitrarily and capriciously and beyond the scope of his authority in revoking plaintiff-appellants grant of voluntary departure effectively retroactively and in denying plaintiff-appellants application to stay his deportation. On September 23, 1975, at a deportation hearing, plaintiffappellant was directed to leave the United States voluntarily on or before October 23, 1975, or any extension granted by the District Director. It was further ordered that if plaintiff-appellant failed to depart by that date, he would be deported to Columbia. On October 19, 1975, plaintiff-appellant applied to the District Director to extend his stay in the United States for personal reasons. His application was granted, and the date entered on the extension letter was November 19, 1976. Plaintiff-appellant thought there was - 2 -

probably a mistake in the date. However he did not know what the consequences would be of he went back and pointed out the mistake of an official of the Immigration and Naturalization Service. Now knowing what to do, plaintiff-appellant did not take any affirmative action.

On January 28, 1976, plaintiff-appellant was interrogated by an investigator of the Immigration and Naturalization Service. Upon discovering the error in date on the extension granted to the plaintiff-appellant, the District Director moved immediately to deport him. He was issued an order to report for deportation on February 2, 1976. Plaintiff-appellant was not taken into custody on January 28, 1976, because upon examination of the original extension letter, the investigator and category officer agreed that the date entered was November 19, 1976.

On January 30, 1976, plaintiff-appellant filed a motion to reopen Deportation Proceedings and Stay Deportation.

On January 30, plaintiff-appellant's application to stay his deportation was orally denied by the District Director. On February 4, 1976 he received a written denial.

On February 2, 1976, plaintiff-appellant caused the U.S.

District Court for the Southern District by Judge Wyatt to issue an order to show cause why defendant-appellee should not be restrained from deporting him, pending the determination of plaintiff-appellant's complaint filed in the court on the same date.

On February 6, 1976, a hearing was had. The defendant had a motion to dismiss plaintiff's complaint and vacate the stay of deportation issued on February 2, 1976. The Court granted defendant's motion.

ARGUMENT

POINT I

THE ACTION OF THE DISTRICT DIRECTOR IN REVOKING PLAINTIFF-APPELLANT'S GRANT OF VOLUNTARY DEPARTURE WAS ARBITRARY, CAPRICIOUS, AND EXCEEDED HIS SCOPE OF AUTHORITY

Plaintiff-appellant was granted voluntary departure by the Immigration Judge. Such grant could not be revoked by the District Director. The District Director's representative granted plaintiff-appellant's request for an extension of voluntary departure. Plaintiff-appellant was not instrumental in creating the ambiguity of the date entry. It should, therefore be construed against the party who created the ambiguity, in the case the District Director.

The District Director does have the authority to revoke an extension of voluntary departure which he granted. However, in allowing the plaintiff- appellant a period of two business days to effect his departure from the United States, when he was not in possession of a passport or any travel document, was in effect to order his deportation in violation of the order entered by the Immigration Judge.

POINT II

THE DISTRICT DIRECTOR ACTED ARBITRARILY AND CAPRICIOUSLY IN DENYING PLAINTIFF APPELLANT'S APPLICATION TO STAY LIS DEPORTATION.

Plaintiff-appellant made a motion to reopen his deportation hearing before the Immigration Judge. In denying his application to stay his

deportation, the District Director was effectively abrogating plaintiffappellant's right to have an ajudication on the motion. If plaintiffappellant were forced to leave the country, he would not be entitled
to have his motion decided. The Immigration and Nationality Act
contemplates two avenues of relief, one through the office of the
district director and one through the immigration courts. The District
Director's action in this case negated the authority and power of the
court to act, as it is properly constituted to do.

CONCLUSION

The District Court's denial of plaintiff-appelant's motion for a preliminary injunction should be reversed, and the defendant should be enjointed from deporting the plaintiff-appellant.

Plaintiff-appellant requests permission to elicit the testimony of the investigator and category officer on the issue of the disputed date entry and their subsequent discussion on January 28, 1976.

LIST OF JOINT APPENDIX

- 1. Docket Entries
- 2. Order to Show Cause
- 3. Summons
- 4. Complaint
- 5. Affadavit in Opposition
- 6. Endorsed Order of U.S. District Court
- 7. Notice of Appeal

PROCEEDINGS

JUDGE

02-0276

02-02-76 2

02-09-76 L.

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Filed Comple int, Issued Summons.

Filed defts Affid vit & Orde to Show Gause with a stay why pending the determination by this Court of the issues raised in the se proceedings the should not be stayed from deporting the pltff etc, as indicated rible before Wyatt, J. on 2-6-76.

Filed -defis Affidavit in opposition to pltffsorder to show cause with a stay of deportation, etc., as indicated.

Filed meno endorsed on Ofder to show cause filed 2-2-76. Motion denied, Wyatt,

Filed Notice that fitte hardy appeals to the U.S.C.A.P from the order of Wyatt, std 2-9-76, Mailed Notice to U.S. ATTOMMEY 1 ST. ANDREWSPIAZA N.Y.C. U.Y. 10007

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By Doputy Clerk

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MAURICE F. HITT MELANTE DIRECTOR. U.S. HALLAND N TUPALIZATION SERVICES

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J.N.

CAUSE

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

760 517

OSCAR LONDONO.

JUDGE WYALL

-againstMAURICE F. KILEY, New York District

Director of the U.S. Immigration &

Naturalization Service,

Defendant.

Plaintiff.

ORDER TO SHOW CAUSE

WITH STAY

A21-055-433

نی

Upon the annexed affidavit of Linda Atlas, Esq., the attorney for the above named plaintiff dated the 30th day of January, 1976, the copy of the action which is on file with this Court, and upon all proceedings heretofore had and good cause bring shown, it is hereby

ORDERED, that the Defendant in this action show cause at the United States Courthouse, Poley Square, New York, New York, in Room 2703 on FORWAY 6, 1976, at 230 m. in the forenoon or as soon thereafter as counsel may be heard why pending the determination by this Court of the issues raised in these proceedings the Defendant ghould not be stayed from deporting the Plaintiff and RESTATIONS DETERMINED THAT FIRST DECEMBER FORFEIT, THE PLAINTIFF'S IMMIGRATION GEND OF \$2,500 AND FURTHER ORDERED, that the Defendant be, and hereby is temporarily

stayed from deporting said Plaintiff, pending the hearing and determination of this motion, and it is further

ORDERED, that personal service of a copy of this order upon the United States Attorney for the Southern District of

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New York, or his representative on or before 5 p.m. on fusion 1976 be good and sufficient service upon the defendant.

Dated: New York New York
FUBRUARY 24/976

Same at 2pm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR LONDONO.

Plaintiff,

-against
MAURICE F. KILEY, New Yrok District
Director, U.S. Immigration & Naturalization
Service,

Defendant.

State of New York)

ATTORNEY'S AFFIDAVIT

State of New York)

County of New York)

LINDA ATLAS, being an attorney duly admitted to practice law in the State of New Yorkm swears and deposes:

That your affiant represents the above captioned plaintiff with respect to the within action and is familiar with the facts pertaining thereto, as related to your affiant by the plaintiff.

That the plaintiff made a Motion to Reopen Deportation Proceedings and to Stay Deportation on January 30, 1976. That the motion was denied by the District Director on January 30, 1976.

That the plaintiff is currently under an order of deportation to take effect on February 2, 1976 at 9A.M.

That the plaintiff was granted voluntary departure at a hearing on September 23, 1975 until October 23, 1975. Prior to the expiration of the voluntary departure date, the plaintiff requested and was granted an extension of time to depart the

United States. The date entered on the approval (Form I-210) is November 19. 1976.

That on January 28, upon discovering the error in date, the District Director moved immediately to deport the plaintiff. The plaintiff was issued an order to report for deportation to the U.S. Immigration and Naturalization Detention Facility at 136 Flushing Avenue, Brooklyn, New York on February 2, 1976.

That despite the fact that the plaintiff was granted voluntary departure by the Immigration Judge, and in possession of grant of extension of voluntary departure still valid on its face, he was not permitted the option of departing voluntarily at his own expense.

That the plaintiff was given a total of two business days to settle his affairs and prepare to depart the country. The customary time allowed is thirty days.

That the plaintiff is not currently in possession of a passport from his native country of Colombia. He will need time to obtain his passport in order to return to Colombia. On information and belief, the procedure followed in Colombia is to detain any person returning without a passport. The plaintiff may thus be subject to detention for a period of several weeks if he returns in this manner.

wherefore your affiant prays that a stay of deportation be granted until such time as there is an adjudication of the underlying Action pending before this Court.

This action is being broungt on by an order to show cause because the plaintiff is under an immediate order of deportation.

There has been no previous amplication for the relief sought herein to any court or any judge thereof.

BARRY J. OPPENHEIM, ESQ.

this Indiche of Holoromy 1976

Minister Lightes March SC, 1977

EY: LINDA ATLAS

Of Counsel

BEST COPY AVAILABLE The undersigned acknowledges receipt of a copy of dam party to this action; I am over 18 years in this the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depositary under the exclusive care and custody of the United States Postal Service within the State of New York. Type or Priet Name Seizer Signature APPIDAVIT OF SERVICE BY MAIL ADMISSION OF SERVICE STATE OF NEW YORK Attorney(s) for the attorney(s) for Sworn to before me COUNTA action, of SOUTHERN DUTRICT OF NEW YORK INTERN EPATES APPORNEY UNITEL STATES DISTRICT CASIST MAURICE F. KILEY NEW Year 19 District Director of LONDANO ORDER TO

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

OSCAR LONDONSO.

-against-MAURICE F. KILEY, New York District Director, U.S. Immigration & Naturalization Service.

Defendant.

Flaintiff, JUDGE WYAT!

118 . 3 to FH '76/

CIVIL ACTION NO.____ COMPLAINT

A21-056-433

Plaintiff, by his attorney, respectfully alleges:

- 1. This is an action for a declaratory judgment under 28 U.S.C. 2201, and for review under the Administrative Proceedure Act, 5 U.S.C. 702-706 and 8 U.S.C. 1329.
- 2. Plaintiff seeks review of an oral denial of his application for a stay of deportation on January 30, 1976 by the District Director of the U.S. Immigration and Naturalization Service at 20 West Broadway, New York, New York, (Exhibit A).
- 3. Flaintiff filed on January 30, 1976 a Motion to Reopen Deportation Proceedings based on new facts, (see motion attached to application for a stay of deportation).
- 4. A determination by the Immigration Judge has not yet been made on the Motion to Reopen. The pending motion and its determination is not sufficient to stay the order of deportation now in effect against the plaintiff. In order for the Immigration Judge to consider the motion, the plaintiff would have to be present in the United States. To deport the plaintiff at this time would deprive him of the right to have his motion ruled on

Defendant.

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- the Administrative Procedure Act, the additional facts are hereby stated.
- 6. The plaintiff is a native and citizen of Colombia. He entered the United States without inspection on August 8, 1975.
- 7. Plaintiff was granted voluntary departure at a hearing before the Immigration Judge held on September 23, 1975 until October 23, 1975, (Exhibit B).
- 8. Prior to the expiration of the voluntary departure date, plaintiff requested and was granted an extension of time to depart the United States by the District Director.
- 9. The date entered on the approval form (I-210) is November 19, 1976, (Exhibit C).
- 10. On January 28, 1976, plaintiff was interrogated by an investigator of the Immigration and Naturalization Service.

 Upon discovering the error in date on the extension granted to the plaintiff, the District Director moved immediately to deport the plaintiff. He was issued an order to report for deportation to the U.S. Immigration and Naturalization Service detention facility at 136 Plushing Avenue, Brooklyn, New York on February 2, 1976, (Exhibit D).
- 11. Despite the fact that plaintiff had been granted voluntary was departure by the Immigration Judge, and in possession of a grant of extension of voluntary departure still valid on its face, he was not permitted the option of departing voluntarily at his own expense.

settle his affairs and prepare to depart the country. The customary time allowed is thirty days.

- passport from his native country of Colombia. He will need time to obtain his passport in order to return to Colombia. On information and belief, the procedure followed in Colombia is to detain any person returning without a passport. The plaintiff may be subject to detention for a period of several weeks if he is forced to return without his passport.
- 14. The District Director acted arbitrarily and capriciously in that he effectively revoked the grant of voluntary departure to the plaintiff retroactively, depriving him of the chance to order, we leave the country voluntarily. Further, by plaintiff to depart the country in so short a time deprives him of the opportunity to settle his affairs and obtain a passport in order to return to his country in a regular manner.

WHEREFORE, the plaintiff prays:

- (a) for a judgment declaring the District Director's action in ordering the plaintiff to surrender for deportation on Pebruary 2, 1976 is arbitrary, capricious and an abuse of discretion and said order should be rescinced and
- (b) for an order restraining the defendant from enforcing the departure of the plaintiff from the United States pending an administrative determination of this action and

for an order restraining the defendant from declaring forfeit the plaintiff's immigration bond in the amount of \$2.500 and

(d) for such other and further relief as may be appropriate.

DATED: New York, New York Pebruary 2, 1976 BARRY J OPPENHEIM. ESQ.

BY: LINDA ATLAS

Of Counsel

APPEN ATTOM FOR STAY . I CHIMINATHON

SUBMIT IN DUPLICATE

Read vising tions on to erro before filling out application

Inc No.	A21-055-432 JANUARY 30 1976
Date	JANUARY 30 1976

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Present Address (Apt No.) (Number and St		(State) (Zip Code)
마이트 프로젝트 1980년 1980년 1980년 1982년 1982년 1982년 - 1982년	13 42 ml Ava	- CURNA NY 11368
3. Country of Citizenship	4. Date to which	passport is valid (Attach passport)
COLOMBIA		HONE
5. Country to which deportation has been ordered	6 Date to which	stay of deportanism is requested
COLUMBIA	M	ARCH 2, 1976
Reasons for requesting stay of deportation.		
See OIM	revel hotion	
t Certify that all the statements I have made in this application	ication are true and correct to the best o	f my knowledge and belief
(Signature of Applicant)	(Dated at)	(Date)
9. SIGNATURE OF PER	RSON PREPARING FORM, IF OTHER	THAN APPLICANT
I deciare that the document was prepared by me at the re	quest of the applicant and is based on all	Information of which I have any knowledge INCL. JANUARY 34 1976 YMY (USO) (11ste) LINE
(Signature) Borry J 00	pentan ESQ (Address) N.	(1)101)
APPLIE	MANT DO NOT WRITE BELOW THIS	LINE
Stay denied/granted until	<u> </u>	

Form 1 246 (Hev. 4 10 /2)**

EXHIBIT A,

AND TO STAY DEPORTATION OF OSCAR LONDONG #A21 055 433

Alien was granted voluntary departure at a hearing on September 23, 1975 until October 23, 1975. Prior to the expiration of voluntary departure, the alien presented himself to the deportation officer and requested and received an extension of time to depart the United States. The date entered on Form I-210 is November 19, 1976.

The next time alien's record was reviewed on January 28, 1976, the error in date was discovered by the deportation section. The deportation section moved immediately to deport the alien. The alien was issued aform I-294, warning of deportation, and Form I-166, transportation notice requiring him to report to a United States Immigration Officer at the Navy Yard, 136 Flushing Avenue, Brooklyn, New York on February 2, 1976 at 9 A.M. in order to be deported.

The alien was not permitted the option of departing voluntarily at his own expense, despite the fact that the order of the Immigration Judge and the extension still valid on its face granted him voluntary departure. Further, he was given a total of two working days to settle his affairs and prepare to depart the country.

The alien is not currently in possession of a passport from his native country on Colombia. He will need time to obtain

EXHIBIT A2

and belief, the procedure followed in Colombia is to detain any person returning in an irregular manner, i.e. without a passport. Alien may be subject to detention for a period of several weeks if he returns in this manner.

Based on the foregoing circumstances, none of which
was present at the original hearing on September 23, 1975.

it is requested that voluntary departure be restored nunc pro tunc.

It is further requested that the District Director stay the
deportation of the alien now scheduled for Pebruary 2, 1976. It
is further requested that the District Director grant an extension
of thirty days to the alien in order to settle his affairs, obtain
his passport and ticket and to depart voluntarily at his own expense
from the United States.

BARRY J. OPPENHEIM. ESQ. 11 Fark Place New York, N.Y. 10007 865-5235

BYA

LINDA ATLAS Of Counsel

EXHIBIT A,

LED STATES OF AMERICA:

UNITED STATES DEFALLMENT OF JUSTICE

ie Marier of

Lo. DOM-GUIRDZ, Cocar

of the fining ration and Mationality Act

DECISION OF THE

Respondent.

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the I to Show Cause.

Respondent has made application solely for voluntary departure in fieu of deportation.

CRDER. It is ordered that in lieu of an order or deportunous respondent be granted voluntary departure capense to the Government on or before 1007 12, 12, 1000 (Out.)

ny chansion beyond such date as may be granted by the district director, and under such conditions as the fact director shall direct.

21 IS FURTHER ORDERED and it respendent tails to ucquet vision and an equired, the privilege of intary departure shall be withdown without finite indicates a respendent shall be deported tool to claim details in the reliability effective: respondent shall be deported tool to claim details in a claim of the Charles of th

IT IS FURTHER ORDERED that if the atotennor bounts advises the resource Central that it is unwilling exper the respondent into its terrory or tails to a fine the attorney Control within three months following and inquiry whether it will or will not accept respondent into its terrory, the respondent shall be deported

py of this decision has been served on regordent.

Appeal. Warred-re, hed

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De Tolling

(Investigration Judge)

T.A. Speer

EXHIBIT. B

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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

PLEASE REFER TO # . FILE NUMBER

A-21.055433 D/ATES

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	You have violated the terms of your admission as a nonnamigrant. Consequently, permission previously granted you to remain in the United States is reseinded. You are required to depart
	from the United States at your own expense on at hefore
	In accordance with a decision made in your case you are required to depart from the United States at your own expense on or before
1	Your application for afrestension of time in which to depart from the United States has been 19 19 19 15 25
	Mf. 19 1925
You me	ist notify this office. Room No on or before arrangements you have made to effect your departure, including the date, place, and manuer.
Failure and ac	to depart on or before the specified date may result in the withdrawal of voluntary departure tion being taken to effect your deportation.

If there is a bond outstanding in your case, you are wanted that to expedite cancellation of the hard and return of the collateral posted, you must make advance arrangements with the office to have your departure witnessed by an officer of the bond of the posterior.

USE THE ENCLOSED SELF-ADDRESSED CARD TO COTHA THE OFFICE BLCARDING DEPARTURE ARRANGEMENTS. FORTACE IS NOT REQUIRED. At the time of some disparture, do not fail to surrender Form 1-94, ARRIVAL DEPARTURE RECORD, in accordance with instructions on that form

Departed:

Port ______ Date ______ | 1-94 stamped | 1-530 submitted
To ______ | 1-101 prepared | 1-156 prepared

Form 1-210

EXHIBIT C

Immigration and Naturalization Service 20 West Broadway, New York, N. Y. 10007

File No. A21 055 433 TU/ Date: January 28, 1976

Mr. Oscar LONDONO-CUIROZ 55 East 10Gth Street, Apt. 5C New York, New York 10025

CERTIFIED MAIL

RETURN RECEIPT REQUESTS.

please submit PASSPORT

...

PER DEPORTATION

As you know, following a hearing in your case you were found deportable and the hearing officer has entered an order of deportation. A review of your file indicates there is no administrative relief which may be extended to you, and it is now incumbent upon this service to enforce your departure from the United States.

			(4	country)
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(date)			of departure)	
BY TRANSPORTATION O				
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	100		- 011:	
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UNITED STATES DISTRICT COUNT SOUTHERN DISTRICT OF NEW YORK

OSCAR LONDONO.

Plaintiff, :

W 40

HAURICE F. KILEY, New York District Director of the J.S. Immigration & Naturalization Service. TIME TO SHOW CAUSE

STAY OF DEPOR-

TATION

76 Civ. 517 (IBW)

Defendant.

STATE OF NEW YORK

88.:

COUNTY OF NEW YORK

THOMAS H. BELOTE, being duly sworn, deposes and says:

Attorney in the office of Thomas J. Cahill, United States
Attorney for the Sou of District of New York, attorney
for the defendant here a, and as such I am in charge of
this action. I submit this affidavit in opposition to
the order to show cause signed by the Court on February
2, 1976 directing the defendant to show cause why the
plaintiff's deportation should not be stayed. This
affidavit is based on the administrative file of the
Demigration and Naturalization Service (hereinafter referred
to as the "Service") relating to the plaintiff.

old alien, a native and citizen of Columbia, who surreptiously entered the United States on or about August 8, 1975 at the international border near Tijuana, Mexico, without inspection by immigration officers as required under the Immigration and Nationality Act. In addition to being deportable, this alien appears amenable to prosecution for violation of 8 U.S.C. §1325. In order to effect this entry the alien admitted to paying an identified person \$200. (Exhibit A). His wife and two minor children are currently residing in Columbia. The alien was apprehended by Service investigators on September 11, 1975 and was released on bond pending a hearing on his deportability.

- 3. On September 12, 1975 the Service commended deportation proceedings with the issuance of an order to show cause and notice of hearing, charging that he was deportable from the United States pursuant to Section 241(a)(2) of the Act, 8 U.S.C. §1251(a)(2), as an alien who entered the United States without inspection (Exhibit B).
- 4. During the deportation hearing before an Eucligentiem Judge and while represented by counsel, the slien conceded his deportability. At the slien's

request and upon his representation that he was ready, willing and able to depart from the United States, the Immigration Judge granted him the discretionary privilege of voluntary departure in lieu of enforced deportation provided that he depart on on before October 23, 1975.

See Section 244(e) of the Act, 8 U.S.C. \$1254(e), 8 C.F.R. \$244.1. An alternative order of enforced deportation was entered in the event the alien failed to depart within the designated time as he had represented during the hearing. Londono waived his right to appeal the decision of the Immigration Judge and the decision became final.

8 C.F.R. \$242.21 (Exhibit C).

voluntary departure time the alien applied for and was granted an extension of time, to and including November 19, 1975, in which to effect his departure from the United States. This extension was granted on the basis that the alien had made arrangements to depart to Baranquilla, Columbia on that same date. An airline ticket issued on October 22, 1975 was submitted to the Service in support of this request for extended voluntary departure (Exhibit D). On December 4, 1975 and again on January 8, 1976 the Service attempted to varify the alien's voluntary departure (Exhibits E and F). On January 23, 1976 the Service was notified that the airline had no record on its manifest indicating that the alien

had voluntarily departed as represented. On that same date, and pursuant to the alternative order of enforced deportation contained in the decision of the Immigration Judge, a warrant of deportation was issued against the plaintiff slien (Exhibit G).

- 6. At approximately 7 A.M. on January 28,
 1975 the alien was again apprehended by Service investigators and was given notice to surrender for deportation
 on February 2, 1976.
- 7. On January 30, 1976 the alien submitted to the Service a request for a stay of deportation and a motion to reopen deportation proceedings (Exhibit N). On that same date the alien was notified that his voluntary departure status would be reinstated if he surrendered as requested at the Service Facility in Brooklyn, New York and presented an airline ticket and requisite travel documents.
- deportation and prolong his illegal sojourn in the United States, the alien filed this action on February 2, 1976 seeking to have the District Director's action declared arbitrary, capricious and an abuse of discretion. He further seeks to restrain the defendant from enforcing the valid order of departation issued against him.

- 9. On February 4, 1976 the District Director denied the alien's application for a stay of deportation (Exhibit I). That decision noted that the alien had previously been granted an extension of time, to and including Hovember 19, 1975, because he had presented an airline ticket indicating that he would depart on Hovember 19, 1975. The decision further noted that the extension had been granted solely for the purpose of effecting that departure.
- adhered to the view that an alien has no "right" to remain in the United States. See Noet v. Chapman, 508 F.2d 1023 (2nd Cir. 1975), cert. denied, U.3. (Getober 6, 1975); Paited States ex. rel. Lee Pao Fen v. Esperdy, 423 F.2d 6 (2d Cir. 1970); Boners v. Immigration and Maturalization Service, 443 F.2d 30 (9th Cir. 1971); Manatan v. Immigration and Maturalization Service, 425 F.2d 693 (7th Cir. 1970).
- been entered, the grant or denial or an extension of voluntary departure or a stay of departation, is committed entirely to the discretion of the District Director. 8

 G.F.A. \$244.2 and \$243.4. The sole issue in this action is whether the District Director abused his discretion in denying Londono a stay of departation following that

alien's failure to depart voluntarily as he had represented to the Service on two prior occasions.

12. The scope of review of the District Director's discretionary decision to deny a stay of deportation or grant an extension of voluntary departure is very narrow. Unless that decision is found to be without any rational basis, or to depart inexplicably from established practices as to rest on an impermissible basis, this Court should not substitute its judgment for that of the District Director. Li Choung v. Esperdy, 377 F.2d 819 (2d Cir. 1967); Wong Wing Hang v. Immigration and Naturalization Service, 360 F.2d 715 (2d Cir. 1966); Vardian v. Esperdy, 197 F. Supp. 931 (S.D.H.Y. 1961). affirmed, 303 F.2d 279 (2d Cir. 1962); See also, Bartach v. Watkins, 175 F.2d 1083 (26 Cir. 1949); Randarge v. Esperdy, 334 7. Supp. 1083 (S.D.N.Y. 1970); Montgomery v. Ffrench, 299 F.2d 730 (8th Cir. 1962). The absence of good faith and diletory tactics on the part of the alien are reasonable grounds for denial. Lam Tit Sin v. Esperdy, 277 F. Supp. 482 (S.D.N.Y. 1964), affirmed 334 F.2d 999 (2d Cir. 1964). The burden of proving that an extension of voluntary departure or a stay of deportation should be granted is always on the alien. Roumelioris v. Immigration and Maturalization Service, 304 F.2d 453 (7th Cir. 1962), cert. denied, 371 U.S. 921.

enforce the deportation of this concededly deportable alien was a proper exercise of discretion based on the locality of circumstances in this case. The plaintiff has failed twice in the past to effect his voluntary departure despite his representations to the Service that he would do so. The plaintiff's spouse and children are in Columbia and there are no compelling humanitarian factors evident in this case warranting an additional extension of time or granting of a stay of deportation. It is respectfully submitted that the District Director's denial of the stay of deportation should be affirmed.

MEREFORE, it is prayed that the motion for a preliminary injunction be denied in all respects, that the stay be vacated, and that the underlying complaint be dismissed.

THOMAS H. BELOTE, Special Assistant United States Attorney

Sworn to before me this 5th day of February, 1976.

> Notary Public, State of New York No. 41-2292838 Queens County Term Expires March 30, 1977

Form I-215B (Rev. 9-1-72)Y

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVIC

RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT

N RF	LONDONO - QUIRO	2. DSCAR	FILE NO	es essential de la company
VEC	TITED AT		DATE_7/11/75	7 -0 1/2
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*	SPANISH	language. Interpreter_		used.
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auti	horized by law to administer	oaths and take testimony i	n connection with the enfo	rcement of the
Ima	migration and Nationality law	s of the United States. He	has informed me that he	desires to take
my	sworn statement regarding:	114 2173 EN.	TRY IND THE	4.5.
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	has told me that my statemen	at must be freely and volum	itaniy given and has adv	ised me of these
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	If you cannot afford a law wish.	yer, one will be appointed	for you before any question	oning ir you
	If you decide to answer qu	estions now without a lawy	ver present, you will still h	ave the
	right to stop answering at		the right to stop answerin	ng at any time
	until you talk to a lawyer.		I A-1 I	
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Subscribed and sworn to before me at	136 FLUSHING AUE
BKCYN NY. On	9/11/25

Officer, United States Immigration and Naturalization Service

Witnessed by:

RECORD OF SWORN STATEMENT

UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalisation Egyptice Form I-263A (Rev. 11-20-61)

UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

No

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Departation	Proceedings unde	Cantina 24	2 of the	Immigration and	Nationality	Act
in Deportation	Proceedings unde	Section 24	2 Of the	immingration and	Mattonatity	Act

UNITED STATES	OF AMERICA:	File NoA21 055 433
In the Matter of	LONDON-QUIROZ, Oscar	Respondent
Address (number, st	reet, city, state, and ZIP code)	
UPON inquiry	conducted by the Immigration and Natura	lization Service, it is alleged that:
1. You are not a	citizen or national of the United States;	
2. You are a nativ	e ofColombia	and a citizen of Colombia
or about 8/8	e United States axx near San Ysid: 8/75 (date)	ro, California on
4. You were n Naturaliza	ot inspected by the United Station Samuice.	ites Immigration and
	pasis of the foregoing allegations, it is, chewing provision(s) of law:	rarged that you are subject to deportation pur-
Na	ction 241(a)(2) of the Immigrationality Act, in that, you enited States without inspection	tered the
Immigration and on Sept deported from the	Naturalization Service of the United Sta 136 Flushing Avenue, Broo	
issued pursuant t accordance with t as a warrant to ar lease are set on th	thereto, I have commanded that you be to the applicable provisions of the immigration by Immigration Officer to take you into come reverse hereof.	on laws of the United States and the regulations aken into custody for proceedings thereafter in laws and regulations, and this order shall serve ustody. The conditions for your detention or receiving DISTRICT DIRECTOR (City and State)

Fundi

Form 1-221S (12-1-73)

(over)

1

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALTEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE.

CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a Foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determine that pending a final determination of deportability in your case, and, in the event you are ordered deported, until you departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:
Detained in the custody of this Service. Released on recognizance.
Released under bond in the amount of \$ 2500.00
You may request the Immigration Judge to redetermine this decision.
REQUEST FOR PROMPT HEARING
To expedite determination of my case, I request an immediate hearing, and waive any right I may have to move extended notice. I do
Served by me at 136 [US/1115916 on 9/12 1975 at 40]
Interpreter (signature and title a employee or officer)
() () () () () () () () () ()

UNITER STATE ALERA

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

LONDON-QUIROZ,

Oscar

Respondent.

In Deportation Proceedings Under Section 242 of the Immigration and Nationality Act

DECISION OF THE

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before ____OCT__v3, 1975 (Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if the aforenamed country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported

Copy of this decision has been served on respondent.

Appeal: Waived-refred

9/23/25

NY (

Dkny Willner (Impligration Judge)

FINAL ORDER

SEP 23 1975

FORM 1-30 (PEV 5-1-73) KB

Г № 8108986357 0 п LONDON OSCAR

BEST COPY AVAILABLE

UNDED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE 20 West Broad ay New York, New York 10007

December 4, 1975

Eastern Airlines International Airport Miami, Florida 33148 c/o George F. Prennan

> RE: Oscar Londono-Quiroz A21 055 433

Dear Sir:

This service is unable to close the file on the above named subject, He allegedly departed Miami, FLA via Eastern Airlines FLT 191 on the 19th of Movember, 1975 to foreign, final destination being Barranquilla.

It would be appreciated if you would verify this departure from your manifest so we may properly close our records. Attached is a self-address d envelope for return correspondence, and a copy of the airline ticket purchased October 22, 1975.

Homeld J. She

HAROLD J. GRACE

ASSISTANT DISTRICT DIMECTOR

A21 055 433 DB/TAS

FOR DEPORTATIO!

ENCL.

Eastern does not fly to Bananquilla. according to the ticked, the passenger was scheduled to fly on aerocander (00) flight 191.

Robert L. Bergsweum. Facilitation analysis.

POSTAGE AND FEED PA

IMMIGRATION AND NATURALIZATIO

JUB-433 .. C 1073

> UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE

NEW YORK, N.Y. 10007 20 WEST BROADWAY

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

UNITED STATES DEPARTMENT OF JUSTICE INDICATION & NATURALIZATION SERVICE New York, New York 10007 20 West Broadway

Mr. Stefanski ATTENTION: DIMEP I-154

20 West Broadway New York, New York 10007

A21 055 433 DB/TAS

January 8, 1976

Aerocondor Airlines 501 Fifth Avenue Suite 2003 New York, New York 10017

> RE: Oscar LONDONO-QUIROZ A21 055 433

Dear Sir:

This service is unable to close the file on the above namde subject, he allegedly departed Miami, FLA via Aerocondor Airlines FLT # 191 on the 19th of November, 1975 to foreign, final destination being Barranquilla.

It would be appreciated if you would verify this departure from your manifest so we may properly close our records. Attached is a self-addressed envelope for return correspondence, and a copy of the airline ticket purchased October 22, 1975.

Very truly yours,

HAROLD J. GRACE ASSISTANT DISTRICT DIRECTOR FOR DEPORTATION

ENCL.

Musi CIELL OF MERICENDER AIRLINES ADVISED- SHE
HAD NO RECORD ON PAX MANIFEST OF ALIEN. HAVING
DEPARTED AS PER ABOVE,

M. Stylishi

UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

WARRANT OF DEPORTATION

No. A21 055 433

To any Officer or Employee of the United States Immigration and Naturalization Service.

After due hearing before an authorized officer of the United States Immigration and Naturalization Service, and upon the basis thereof, an order has been duly made that the alien LONDON-OUIROZ, Oscar aka LONDONO-OUIROZ, Oscar

who entered the United States at near San Ysidro, California

on or about the 8th day of August , 19 75 , is subject to deportation under the following provisions of the laws of the United States, to wit:

Section 241(a)(2) of the Immigration and Nationality Act.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, command you to take into custody and deport the said alien pursuant to law, at the expense of the Expenses. Immigration and Maturalization salaries and Expenses. Immigration and Maturalization lervice, 1977, including the expenses of an attack of if necessar,

gnature:					
Title: ASSISTAND	DISTRICT	DIRECTOR	FOR	DEPORTAT	ION
Date: JANUARY	20, 1976				

Form I-205 (Rev. 8-4-72) N

RECEIVED

Form approved OMB No. 43-R402.2

United States Department of Justice Immigration and Naturalization Service

APPLICATION FOR STAY OF DEPORTATION

SUBMIT IN DUPLICATE

Read instructions on reverse before filling out application

JAN 3) 1976

Immigration and 1976 153478 [[

Date JANUARY 30 1976

	Clams 6	25 . 72 10	- VAIN	-
. Name (Family Name in Capital letters)	(First Name)		(M	iddle Name)
LONDONO	OSCA	R		
2. Present Address (Apt. No.) (Number and Str		wn or City)	(State)	(Zip Code)
95-	13 42	d Ave	CORONA	NY 11368
3. Country of Citizenship	14	Date to which pas	sport is valid (Attach p	assport)
COLOMBIA	.		NONE	
6. Country to which deportation has been ordered		Date to which sta	y of deportation is req	uested
COLUMBIA		MAI	RCH 2, 19	476
7. Reasons for requesting stay of deportation:				
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8. I certify that all the statements I have made in this applica-	ation are true and corre	at to the best of my	knowledge and belief	
s. I certify that an the statements I have made in this applica	ation are true and corn	it to the best of my	knowledge and being	
(Signature of Applicant)		Dated at)		(Date)
9. SIGNATURE OF PERS				
I declare that this document was prepared by me at the requirement of the of th		Park Plac		WARY 34 1976
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Form 1-246 (Rev. 4-10-72)N

MOTION TO REOPEN DEPORTATION PROCEEDING AND TO STAY DEPORTATION OF OSCAR LONDONO #A21 055 433

Alien was granted voluntary departure at a hearing on September 23, 1975 until October 23, 1975. Prior to the expiration of voluntary departure, the alien presented himself to the deportation officer and requested and received an extension of time to depart the United States. The date entered on Form I-210 is November 19, 1976.

The next time alien's record was reviewed on January 28, 1976, the error in date was discovered by the deportation section. The deportation section moved immediately to deport the alien. The alien was issued aform I-294, warning of deportation, and Form I-166, transportation notice requiring him to report to a United States Immigration Officer at the Navy Yard, 136 Flushing Avenue, Brooklyn, New York on February 2, 1976 at 9 A.M. in order to be deported.

The alien was not permitted the option of departing voluntarily at his own expense, despite the fact that the order of the Immigration Judge and the extension still valid on its face granted him voluntary departure. Further, he was given a total of two working days to settle his affairs and prepare to depart the country.

The alien is not currently in possession of a passport from his native country on Colombia. He will need time to obtain

and belief, the procedure followed in Colombia is to detain any person returning in an irregular manner, i.e. without a passport. Alien may be subject to detention for a period of several weeks if he returns in this manner.

Based on the foregoing circumstances, none of which
was present at the original hearing on September 23, 1975,
it is requested that voluntary departure be restored nunc pro tunc.
It is further requested that the District Director stay the
deportation of the alien now scheduled for February 2, 1976. It
is further requested that the District Director grant an extension
of thirty days to the alien in order to settle his affairs, obtain
his passport and ticket and to depart voluntarily at his own expense
from the United States.

BARRY J. OPPENHEIM. ESQ. 11 Park Place New York, N.Y. 10007

865-5235

LINDA ATLAS

Of Counsel

BY

A21 055 433 DB/TAS

20 West Broadway New York, New York 10007

February 4, 1976

Mr. Oscar LONDONO-QUIROR 95-13 42nd Avenue Corona, Queens, New York 11368

Dear Sir:

This is to advise you that Application for Stay of Deportation filed on your behalf on January 30, 1976 has been denied for the following reasons:

You failed to depart from the United States on November 19, 1975 in accordance with airline ticket showing confirmed reservation to depart. Extension of voluntary departure was granted specifically for purpose of departure.

You failed to surrender or otherwise report to an Immigration Officer on February 2, 1976 in accordance with surrender notice served on you January 23, 1976.

Very truly yours,

Maurice F. Kiley District Director

New York District 11 Park Place

New York, N.Y. 10007

cc: Barry J.Oppenheim, Esq.

AFFIDAVIT OF PERSONAL SERVICE

COUNTY OF NEW YORK	SS		
			being duly sworn,
deposes and says that he is e			
			United States Attorney for
the Southern District of New Y	York, attorney for the		
herein.			
That on the	day of	, 19,	he did serve a true copy of
the hereto annexed			
on the office of			
attorney for the			
Borough of	, City of New	York, by leaving	a true copy of the same with
the person in charge of said off	fice, there being no one	present who was a	uthorized to give an admission
of service.			
Sworn to before me this			
day of	, 19	9	

AFFIDAVIT OF MAILING

STATE OF NEW YORK COUNTY OF NEW YORK			
			being duly sworn,
deposes and says that	he is employed in the	office of the United S	States Attorney for the Southern
District of New York.			
			he served a copy of the within
by placing the same in a	a properly franked er	elope addressed to:	
And deponent futher sa	ys that he sealed the	said envelope and pl	aced the same in the mail chute Borough of Manhattan, City of
New York.			
Sworn to before me this			
day of		, 19	

Sir:		
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	United States Attorne	ν.
	Attorney for	
To		
7,	Attorney for	
Sir: '		
Please tak	e notice that the within	
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ture to the at the office	of the clerk,	
	C	
New York, o	n the day of	,
19 , at	o'clock in the	noon,

or as soon thereafter as counsel can be

Dated, N.Y., 19

Yours, etc.,

United States Attorney,

Attorney for _____

Attorney for ____

heard.

To

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	Defendant.
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CAUSE WITH	A STAY OF DEPORTATION OF A STAY
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Form No. USA-33s-272 (Rev. 1-28-66)

Court Inde No.

SOUTHERN DISTRICT OF NEW York

OSCAR LONDONIO

Plaintiff,

- against -

MAURICE F. KILEY, District Director, U.S Immigration and Naturalization Service Defendant TOBE WYATT MOTICE OF APPEAL

76-8056

LONDONO, plaintiff above horned, herete appeals to the United States Court of Appeals for the Second Circuit from the final order clenying the plaintiff's action to enjoy the defendant from deporting the plaintiff autrol or Pebruary 6, 1976.

Hand 2/24

Fuel autos
LINDA ATZAS
10F COURSO 1)
BARRY J. OPPENHEIM
11 Park Place
New York, N. Y10007
Attorney for Plumhiff